



Reprinted
February 26, 2004

ENGROSSED HOUSE BILL No. 1264

DIGEST OF HB 1264 (Updated February 25, 2004 5:53 pm - DI 105)

Citations Affected: IC 9-14; IC 9-24; IC 9-30; IC 12-23; IC 35-48; IC 35-50; noncode.

Synopsis: Interlock ignition devices and operating while intoxicated. Makes tampering with an ignition interlock device a Class B misdemeanor under certain circumstances. Requires a court in a county having an ignition interlock program to prohibit a repeat OWI offender from operating a motor vehicle unless the vehicle is equipped with a functioning certified ignition interlock device. Provides that a court may order installation of an ignition interlock device as: (1) a condition of certain deferred prosecution programs; (2) an alternative to an administrative driver's license suspension; and (3) a condition of participation in a post-conviction alcohol abuse deterrent program. Requires a court that orders installation of an ignition interlock device
(Continued next page)

Effective: July 1, 2004.

Dvorak, Kuzman, Duncan, Klinker
(SENATE SPONSORS — WYSS, BRODEN, ZAKAS)

January 15, 2004, read first time and referred to Committee on Courts and Criminal Code.
January 22, 2004, amended, reported — Do Pass.
January 29, 2004, read second time, amended, ordered engrossed.
January 30, 2004, engrossed.
February 2, 2004, read third time, passed. Yeas 93, nays 0.

SENATE ACTION

February 3, 2004, read first time and referred to Committee on Criminal, Civil and Public Policy.
February 19, 2004, amended, reported favorably — Do Pass.
February 25, 2004, read second time, amended, ordered engrossed.

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to notify the bureau of motor vehicles (BMV), and requires the BMV to record this requirement in the person's driving record. Makes the offense of operating a motor vehicle while intoxicated as a Class A misdemeanor or a Class D felony if: (1) at least one passenger is less than 18 years of age; and (2) the driver is at least 21 years of age. Prevents persons who have been convicted of certain offenses involving operating a motor vehicle while intoxicated from obtaining a probationary license. Increases or establishes mandatory jail time for persons convicted of committing certain offenses involving operating a motor vehicle while intoxicated. Provides that certain persons convicted of operating while intoxicated (OWI) must receive assessments for alcohol and drug abuse. Requires a person convicted of OWI causing death to receive a nonsuspendible sentence if the person had a controlled substance in the blood, or a BAC greater than .15%. Specifies that a court is required to suspend the driver's license or vehicle registration of a person convicted of committing certain controlled substance offenses only if the court finds that a vehicle was used in the commission of the offense. Provides that certain out of state convictions may be used as a basis to enhance the penalty for OWI causing serious bodily injury and OWI causing death.

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Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1264

A BILL FOR AN ACT to amend the Indiana Code concerning
motor vehicles.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 9-14-3-7, AS AMENDED BY P.L.112-2001,
2 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2004]: Sec. 7. (a) The bureau shall maintain an operating
4 record for each person licensed by the bureau to drive a motor vehicle.
5 (b) An operating record must contain the following:
6 (1) A person's convictions for any of the following:
7 (A) A moving traffic violation.
8 (B) Operating a vehicle without financial responsibility in
9 violation of IC 9-25.
10 (2) Any administrative penalty imposed by the bureau.
11 (3) If the driving privileges of a person have been suspended or
12 revoked by the bureau, an entry in the record stating that a notice
13 of suspension or revocation was mailed by the bureau and the date
14 of the mailing of the notice.
15 (4) Any suspensions, revocations, or reinstatements of a person's
16 driving privileges, license, or permit.
17 (5) **Any requirement that the person may operate only a**

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motor vehicle equipped with an certified ignition interlock device.

(c) An entry in the operating record of a defendant stating that notice of suspension or revocation was mailed by the bureau to the defendant constitutes prima facie evidence that the notice was mailed to the defendant's address as shown in the official driving record.

(d) An operating record maintained under this section:

(1) is not admissible as evidence in any action for damages arising out of a motor vehicle accident; and

(2) may not include voter registration information.

SECTION 2. IC 9-24-15-6.5, AS AMENDED BY P.L.215-2001, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 6.5. (a) The court shall grant a petition for a restricted driving permit filed under this chapter if all of the following conditions exist:

(1) The person was not convicted of one (1) or more of the following:

(A) A Class D felony under IC 9-30-5-4 before July 1, 1996, or a Class D felony or a Class C felony under IC 9-30-5-4 after June 30, 1996.

(B) A Class C felony under IC 9-30-5-5 before July 1, 1996, or a Class C felony or a Class B felony under IC 9-30-5-5 after June 30, 1996.

(2) The person's driving privileges were suspended under IC 9-30-6-9(b) or IC 35-48-4-15.

(3) The driving that was the basis of the suspension was not in connection with the person's work.

(4) The person does not have a previous conviction for operating while intoxicated.

(5) The person is participating in a rehabilitation program certified by either the division of mental health and addiction or the Indiana judicial center as a condition of the person's probation.

(b) The person filing the petition for a restricted driving permit shall include in the petition the information specified in subsection (a) in addition to the information required by sections 3 through 4 of this chapter.

(c) Whenever the court grants a person restricted driving privileges under this chapter, that part of the court's order granting probationary driving privileges shall not take effect until the person's driving privileges have been suspended for at least thirty (30) days under IC 9-30-6-9. **In a county that provides for the installation of an**

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1 ignition interlock device under IC 9-30-8, installation of an ignition
 2 interlock device is required as a condition of probationary driving
 3 privileges for the entire duration of the probationary driving
 4 privileges.

5 (d) If a court requires installation of a certified ignition
 6 interlock device under subsection (c), the court shall order the
 7 bureau to record this requirement in the person's operating record
 8 in accordance with IC 9-14-3-7. When the person is no longer
 9 required to operate only a motor vehicle equipped with an ignition
 10 interlock device, the court shall notify the bureau that the ignition
 11 interlock use requirement has expired and order the bureau to
 12 update its records accordingly.

13 SECTION 3. IC 9-30-5-3, AS AMENDED BY P.L.291-2001,
 14 SECTION 222, IS AMENDED TO READ AS FOLLOWS
 15 [EFFECTIVE JULY 1, 2004]: Sec. 3. A person who violates section 1
 16 or 2 of this chapter commits a Class D felony if:

17 (1) the person has a previous conviction of operating while
 18 intoxicated ~~and~~

19 ~~(2) the previous conviction of operating while intoxicated that~~
 20 ~~occurred within the five (5) years immediately preceding the~~
 21 ~~occurrence of the violation of section 1 or 2 of this chapter; or~~

22 **(2) the person:**

23 **(A) is at least twenty-one (21) years of age;**

24 **(B) violates section 1(b) or 2(b) of this chapter; and**

25 **(C) operated a vehicle in which at least one (1) passenger**
 26 **was less than eighteen (18) years of age.**

27 SECTION 4. IC 9-30-5-4, AS AMENDED BY P.L.175-2001,
 28 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 29 JULY 1, 2004]: Sec. 4. (a) A person who causes serious bodily injury
 30 to another person when operating a motor vehicle:

31 (1) with an alcohol concentration equivalent to at least
 32 eight-hundredths (0.08) gram of alcohol per:

33 (A) one hundred (100) milliliters of the person's blood; or

34 (B) two hundred ten (210) liters of the person's breath;

35 (2) with a controlled substance listed in schedule I or II of
 36 IC 35-48-2 or its metabolite in the person's body; or

37 (3) while intoxicated;

38 commits a Class D felony. However, the offense is a Class C felony if
 39 **the person has a previous conviction of operating while intoxicated**
 40 **within the five (5) years preceding the commission of the offense. ~~the~~**
 41 **~~person had a prior unrelated conviction under this chapter.~~**

42 (b) A person who violates subsection (a) commits a separate offense

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for each person whose serious bodily injury is caused by the violation of subsection (a).

(c) It is a defense under subsection (a)(2) that the accused person consumed the controlled substance under a valid prescription or order of a practitioner (as defined in IC 35-48-1) who acted in the course of the practitioner's professional practice.

SECTION 5. IC 9-30-5-5, AS AMENDED BY P.L.175-2001, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) A person who causes the death of another person when operating a motor vehicle:

(1) with an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per:

(A) one hundred (100) milliliters of the person's blood; or

(B) two hundred ten (210) liters of the person's breath;

(2) with a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's body; or

(3) while intoxicated;

commits a Class C felony. However, the offense is a Class B felony if **the person has a previous conviction of operating while intoxicated** within the five (5) years preceding the commission of the offense. ~~the person had a prior unrelated conviction under this chapter.~~

(b) A person who violates subsection (a) commits a separate offense for each person whose death is caused by the violation of subsection (a).

(c) It is a defense under subsection (a)(2) that the accused person consumed the controlled substance under a valid prescription or order of a practitioner (as defined in IC 35-48-1) who acted in the course of the practitioner's professional practice.

SECTION 6. IC 9-30-5-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 8. (a) A person who **knowingly or intentionally** tampers with an ignition interlock device for the purpose of:

(1) circumventing the ignition interlock device; or

(2) rendering the ignition interlock device inaccurate or inoperative;

commits a Class B ~~infraction.~~ **misdemeanor.**

(b) A person who solicits another person to:

(1) blow into an ignition interlock device; or

(2) start a motor vehicle equipped with an ignition interlock device;

for the purpose of providing an operable vehicle to a person who is restricted to driving a vehicle with the ignition interlock device

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1 commits a Class C infraction.

2 SECTION 7. IC 9-30-5-10 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 10. (a) In addition to a
4 criminal penalty imposed for an offense under this chapter or
5 IC 14-15-8, the court shall, after reviewing the person's bureau driving
6 record and other relevant evidence, recommend the suspension of the
7 person's driving privileges for the fixed period of time specified under
8 this section.

9 (b) If the court finds that the person:

10 (1) does not have a previous conviction of operating a vehicle or
11 a motorboat while intoxicated; or

12 (2) has a previous conviction of operating a vehicle or a
13 motorboat while intoxicated that occurred at least ten (10) years
14 before the conviction under consideration by the court;

15 the court shall recommend the suspension of the person's driving
16 privileges for at least ninety (90) days but not more than two (2) years.

17 (c) If the court finds that the person has a previous conviction of
18 operating a vehicle or a motorboat while intoxicated and the previous
19 conviction occurred more than five (5) years but less than ten (10)
20 years before the conviction under consideration by the court, the court
21 shall recommend the suspension of the person's driving privileges for
22 at least one hundred eighty (180) days but not more than two (2) years.
23 The court may stay the execution of that part of the suspension that
24 exceeds the minimum period of suspension and grant the person
25 probationary driving privileges for a period of time equal to the length
26 of the stay. If the court grants probationary driving privileges under this
27 subsection, the court may order that the probationary driving privileges
28 include the requirement that the person may not operate a motor
29 vehicle unless the motor vehicle is equipped with a functioning
30 certified ignition interlock device under IC 9-30-8.

31 (d) If the court finds that the person has a previous conviction of
32 operating a vehicle or a motorboat while intoxicated and the previous
33 conviction occurred less than five (5) years before the conviction under
34 consideration by the court, the court shall recommend the suspension
35 of the person's driving privileges for at least one (1) year but not more
36 than two (2) years. The court may stay the execution of that part of the
37 suspension that exceeds the minimum period of suspension and grant
38 the person probationary driving privileges for a period of time equal to
39 the length of the stay. If the court grants probationary driving privileges
40 under this subsection, the court may order that the probationary driving
41 privileges include the requirement that the person may not operate a
42 motor vehicle unless the motor vehicle is equipped with a functioning

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certified ignition interlock device under IC 9-30-8.

(e) If the conviction under consideration by the court is for an offense under section 1(b) of this chapter, the court shall recommend the suspension of the person's driving privileges for at least one hundred eighty (180) days but not more than two (2) years.

(f) If:

- (1) the conviction under consideration by the court is for an offense under section 1(a), 1(c), or 2(a) of this chapter; and
- (2) the court determines that the person was at least twenty-one (21) years of age and operated a vehicle in which at least one (1) passenger was less than eighteen (18) years of age;

the court shall recommend the suspension of the person's driving privileges for at least one hundred eighty (180) days but not more than two (2) years.

(g) If:

- (1) the conviction under consideration by the court is for an offense under section 1(b) or 2(b) of this chapter; and
- (2) the court determines that the person was at least twenty-one (21) years of age and operated a vehicle in which at least one (1) passenger was less than eighteen (18) years of age;

the court shall recommend the suspension of the person's driving privileges for at least one (1) year but not more than two (2) years.

(h) If the conviction under consideration by the court is for an offense under:

- (1) section 4 of this chapter;
- (2) section 5 of this chapter;
- (3) IC 14-15-8-8(b); or
- (4) IC 14-15-8-8(c);

the court shall recommend the suspension of the person's driving privileges for at least two (2) years but not more than five (5) years.

⊕ (i) If the conviction under consideration by the court is for an offense involving the use of a controlled substance listed in schedule I, II, III, IV, or V of IC 35-48-2, **in which a vehicle was used in the offense**, the court shall recommend the suspension or revocation of the person's driving privileges for at least six (6) months.

SECTION 8. IC 9-30-5-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 12. (a) If:

- (1) a court recommends suspension of a person's driving privileges under section 10(b) of this chapter for an offense

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committed under this chapter; and

(2) the person did not refuse to submit to a chemical test offered under IC 9-30-6-2 during the investigation of the offense; the court may stay the execution of the suspension of the person's driving privileges and grant the person probationary driving privileges for one hundred eighty (180) days.

(b) An order for probationary privileges must be issued in accordance with sections 11 and 13 of this chapter.

(c) If:

(1) a court recommends suspension of a person's driving privileges under section 10(c) ~~10(d)~~, or ~~10(e)~~, **10(h)** of this chapter for an offense committed under this chapter; and

(2) the period of suspension recommended by the court exceeds the minimum permissible fixed period of suspension specified under section 10 of this chapter;

the court may stay the execution of that part of the suspension that exceeds the minimum fixed period of suspension and grant the person probationary driving privileges for a period of time equal to the length of the stay.

(d) In addition to the other requirements of this section, if a person's driving privileges are suspended or revoked under section ~~10(f)~~ **10(i)** of this chapter, a court must find that compelling circumstances warrant the issuance of probationary driving privileges.

(e) Before a court may grant probationary driving privileges under this section, the person to whom the probationary driving privileges will be granted must meet the burden of proving eligibility to receive probationary driving privileges.

SECTION 9. IC 9-30-5-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 13. (a) An order for probationary driving privileges granted under ~~section 12~~ of this chapter must include the following:

(1) A requirement that the person may not violate a traffic law.

(2) A restriction of a person's driving privileges providing for automatic execution of the suspension of driving privileges if an order is issued under subsection (b).

(3) A written finding by the court that the court has reviewed the person's driving record and other relevant evidence and found that the person qualifies for a probationary license under ~~section 12~~ of this chapter.

(4) Other reasonable terms of probation.

(b) If the court finds that the person has violated the terms of the order granting probationary driving privileges, the court shall order

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1 execution of that part of the sentence concerning the suspension of the
2 person's driving privileges.

3 SECTION 10. IC 9-30-5-15, AS AMENDED BY P.L.32-2000,
4 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 2004]: Sec. 15. (a) In addition to any criminal penalty
6 imposed for an offense under this chapter the court shall:

7 (1) order:

8 (A) that the person be imprisoned for at least five (5) days; ~~or~~
9 **and**

10 (B) **that** the person ~~to~~ perform at least thirty (30) days of
11 community restitution or service; and

12 (2) order the person to receive an assessment of the person's
13 degree of alcohol and drug abuse and, if appropriate, to
14 successfully complete an alcohol or drug ~~abuse treatment~~
15 program; ~~including an alcohol deterrent program if the person~~
16 ~~suffers from alcohol abuse;~~

17 if the person has one (1) previous conviction of operating while
18 intoxicated.

19 (b) In addition to any criminal penalty imposed for an offense under
20 this chapter, the court shall:

21 (1) order:

22 (A) that the person be imprisoned for at least ~~ten (10)~~ **thirty**
23 **(30)** days; or

24 (B) the person to perform at least sixty (60) days of community
25 restitution or service; and

26 (2) order the person to receive an assessment of the person's
27 degree of alcohol and drug abuse and, if appropriate, to
28 successfully complete an alcohol or drug ~~abuse treatment~~
29 program; ~~including an alcohol deterrent program if the person~~
30 ~~suffers from alcohol abuse;~~

31 if the person has at least two (2) previous convictions of operating
32 while intoxicated.

33 **(c) In addition to any criminal penalty imposed for an offense**
34 **under this chapter, the court shall:**

35 **(1) order that the person be imprisoned for at least three (3)**
36 **days; and**

37 **(2) order the person to:**

38 **(A) receive an assessment of the person's degree of alcohol**
39 **and drug abuse; and**

40 **(B) if appropriate, successfully complete an alcohol or drug**
41 **program;**

42 **if the person is convicted of an offense under section 1(b) of this**

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chapter.

(d) In addition to any criminal penalty imposed for an offense under this chapter, the court shall:

(1) order that the person be imprisoned for at least three (3) days; and

(2) order the person to:

(A) receive an assessment of the person's degree of alcohol and drug abuse; and

(B) if appropriate, successfully complete an alcohol or drug program;

if the person is at least twenty-one (21) years of age and is convicted of an offense under section 1(a), 1(c), or 2 of this chapter in which at least one (1) passenger was less than eighteen (18) years of age.

(e) In addition to any criminal penalty imposed for an offense under this chapter, the court shall order the person to:

(1) receive an assessment of the person's degree of alcohol and drug abuse; and

(2) if appropriate, successfully complete an alcohol or drug program;

if the person is convicted of an offense under section 4 or 5 of this chapter.

(f) An assessment for alcohol and drug abuse required under this section must be conducted by:

(1) a court established alcohol and drug services program certified under IC 12-23-14;

(2) a circuit court alcohol abuse deterrent program established under IC 9-30-9; or

(3) a drug court certified under IC 12-23-14.5.

In a county that does not have a program described in subdivision (1), (2), or (3), the assessment must be conducted by an addiction services treatment provider certified by the division of mental health and addiction under IC 12-23.

(g) A court ordering a person to complete an alcohol or drug program under this section must determine that the program is:

(1) certified under IC 12-23-14 or IC 12-23-14.5; or

(2) authorized under IC 9-30-9.

In a county that does not have a program described in subdivision (1) or (2), the program must be conducted by an addiction services treatment provider certified by the division of mental health and addiction under IC 12-23.

(~~e~~) (h) Notwithstanding IC 35-50-2-2 and IC 35-50-3-1, a sentence

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imposed under this section may not be suspended. The court may require that the person serve the term of imprisonment in an appropriate facility at whatever time or intervals (consecutive or intermittent) determined appropriate by the court. However:

(1) at least forty-eight (48) hours of the sentence must be served consecutively; and

(2) ~~the entire sentence~~ a term of:

(A) imprisonment;

(B) community restitution or service; or

(C) both imprisonment and community restitution or service;

imposed under this section must be served within six (6) months after the date of sentencing.

~~(d)~~ (i) Notwithstanding IC 35-50-6, a person does not earn credit time while serving a sentence imposed under this section.

SECTION 11. IC 9-30-5-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 16. (a) Except as provided in ~~subsection~~ **subsections (b) and (c)**, the court may, in granting probationary driving privileges under this chapter, also order that the probationary driving privileges include the requirement that a person may not operate a motor vehicle unless the vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8.

(b) **An order granting probationary driving privileges:**

(1) **under:**

(A) **section 12(a) of this chapter, if the person has a previous conviction that occurred at least ten (10) years before the conviction under consideration by the court; or**

(B) **section 12(c) of this chapter; or**

(2) **to a person who has a prior unrelated conviction for an offense under this chapter of which the consumption of alcohol is an element;**

may prohibit the person from operating a motor vehicle unless the vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8.

(c) A court may not order the installation of an ignition interlock device on a vehicle operated by an employee to whom any of the following apply:

(1) Has been convicted of violating ~~IC 9-30-5-1 or IC 9-30-5-2~~ **section 1 or 2 of this chapter.**

(2) Is employed as the operator of a vehicle owned, leased, or provided by the employee's employer.

(3) Is subject to a labor agreement that prohibits an employee who

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is convicted of an alcohol related offense from operating the employer's vehicle.

SECTION 12. IC 9-30-6-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 8. (a) Whenever a judicial officer has determined that there was probable cause to believe that a person has violated IC 9-30-5 or IC 14-15-8, the clerk of the court shall forward:

(1) a copy of the affidavit; and

(2) a bureau certificate as described in section 16 of this chapter; to the bureau.

(b) The probable cause affidavit required under section 7(b)(2) of this chapter must do the following:

(1) Set forth the grounds for the arresting officer's belief that there was probable cause that the arrested person was operating a vehicle in violation of IC 9-30-5 or a motorboat in violation of IC 14-15-8.

(2) State that the person was arrested for a violation of IC 9-30-5 or operating a motorboat in violation of IC 14-15-8.

(3) State whether the person:

(A) refused to submit to a chemical test when offered; or

(B) submitted to a chemical test that resulted in prima facie evidence that the person was intoxicated.

(4) Be sworn to by the arresting officer.

(c) **Except as provided in subsection (d)**, if it is determined under subsection (a) that there was probable cause to believe that a person has violated IC 9-30-5 or IC 14-15-8, at the initial hearing of the matter held under IC 35-33-7-1:

(1) the court shall recommend immediate suspension of the person's driving privileges to take effect on the date the order is entered;

(2) the court shall order the person to surrender all driver's licenses, permits, and receipts; and

(3) the clerk shall forward the following to the bureau:

(A) The person's license or permit surrendered under this section or section 3 or 7 of this chapter.

(B) A copy of the order recommending immediate suspension of driving privileges.

(d) If it is determined under subsection (a) that there is probable cause to believe that a person violated IC 9-30-5, the court may, as an alternative to a license suspension under subsection (c)(1), issue an order recommending that the person be prohibited from operating a motor vehicle unless the motor vehicle is equipped with

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1 a functioning certified ignition interlock device under IC 9-30-8
 2 until the bureau is notified by a court that the criminal charges
 3 against the person have been resolved.

4 SECTION 13. IC 9-30-6-8.5 IS ADDED TO THE INDIANA CODE
 5 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 6 1, 2004]: Sec. 8.5. (a) If the bureau receives an order
 7 recommending use of an ignition interlock device under section
 8 8(d) of this chapter, the bureau shall immediately do the following:

9 (1) Mail a notice to the person's last known address stating
 10 that the person may not operate a motor vehicle unless the
 11 motor vehicle is equipped with a functioning certified ignition
 12 interlock device under IC 9-30-8 commencing:

13 (A) five (5) days after the date of the notice; or

14 (B) on the date the court enters an order recommending
 15 use of an ignition interlock device;

16 whichever occurs first.

17 (2) Notify the person of the right to a judicial review under
 18 section 10 of this chapter.

19 (b) Notwithstanding IC 4-21.5, an action that the bureau is
 20 required to take under this section is not subject to any
 21 administrative adjudication under IC 4-21.5.

22 SECTION 14. IC 9-30-6-8.7 IS ADDED TO THE INDIANA CODE
 23 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 24 1, 2004]: Sec. 8.7. (a) A person commits a Class B infraction if the
 25 person:

26 (1) operates a motor vehicle without a functioning certified
 27 ignition interlock device; and

28 (2) is prohibited from operating a motor vehicle unless the
 29 motor vehicle is equipped with a functioning certified ignition
 30 interlock device under section 8(d) of this chapter.

31 (b) A person commits a Class B misdemeanor if the person:

32 (1) operates a motor vehicle without a functioning certified
 33 ignition interlock device; and

34 (2) knows the person is prohibited from operating a motor
 35 vehicle unless the motor vehicle is equipped with a functioning
 36 certified ignition interlock device under section 8(d) of this
 37 chapter.

38 SECTION 15. IC 9-30-6-9 IS AMENDED TO READ AS
 39 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9. (a) This section does
 40 not apply if an ignition interlock device order is issued under
 41 section 8(d) of this chapter.

42 (b) If the affidavit under section 8(b) of this chapter states that a

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1 person refused to submit to a chemical test, the bureau shall suspend
2 the driving privileges of the person:

3 (1) for one (1) year; or

4 (2) until the suspension is ordered terminated under IC 9-30-5.

5 ~~(b)~~ (c) If the affidavit under section 8(b) of this chapter states that
6 a chemical test resulted in prima facie evidence that a person was
7 intoxicated, the bureau shall suspend the driving privileges of the
8 person:

9 (1) for one hundred eighty (180) days; or

10 (2) until the bureau is notified by a court that the charges have
11 been disposed of;
12 whichever occurs first.

13 ~~(c)~~ (d) Whenever the bureau is required to suspend a person's
14 driving privileges under this section, the bureau shall immediately do
15 the following:

16 (1) Mail a notice to the person's last known address that must state
17 that the person's driving privileges will be suspended for a
18 specified period, commencing:

19 (A) five (5) days after the date of the notice; or

20 (B) on the date the court enters an order recommending
21 suspension of the person's driving privileges under section 8(c)
22 of this chapter;

23 whichever occurs first.

24 (2) Notify the person of the right to a judicial review under
25 section 10 of this chapter.

26 ~~(d)~~ (e) Notwithstanding IC 4-21.5, an action that the bureau is
27 required to take under this article is not subject to any administrative
28 adjudication under IC 4-21.5.

29 ~~(e)~~ (f) If a person is granted probationary driving privileges under
30 IC 9-30-5 and the bureau has not received the probable cause affidavit
31 described in section 8(b) of this chapter, the bureau shall suspend the
32 person's driving privileges for a period of thirty (30) days. After the
33 thirty (30) day period has elapsed, the bureau shall, upon receiving a
34 reinstatement fee from the person who was granted probationary
35 driving privileges, issue the probationary license if the person
36 otherwise qualifies for a license.

37 ~~(f)~~ (g) If the bureau receives an order granting probationary driving
38 privileges to a person who has a prior conviction for operating while
39 intoxicated, the bureau shall do the following:

40 (1) Issue the person a probationary license and notify the
41 prosecuting attorney of the county from which the order was
42 received that the person is not eligible for a probationary license.

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(2) Send a certified copy of the person's driving record to the prosecuting attorney.

The prosecuting attorney shall, in accordance with IC 35-38-1-15, petition the court to correct the court's order. If the bureau does not receive a corrected order within sixty (60) days, the bureau shall notify the attorney general, who shall, in accordance with IC 35-38-1-15, petition the court to correct the court's order.

SECTION 16. IC 9-30-6-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 10. (a) A person **against whom an ignition interlock device order has been issued under section 8.5 of this chapter** or whose driving privileges have been suspended under section 9 of this chapter is entitled to a prompt judicial hearing. The person may file a petition that requests a hearing:

- (1) in the court where the charges with respect to the person's operation of a vehicle are pending; or
- (2) if charges with respect to the person's operation of a vehicle have not been filed, in any court of the county where the alleged offense or refusal occurred that has jurisdiction over crimes committed in violation of IC 9-30-5.

(b) The petition for review must:

- (1) be in writing;
- (2) be verified by the person seeking review; and
- (3) allege specific facts that contradict the facts alleged in the probable cause affidavit.

(c) The hearing under this section shall be limited to the following issues:

- (1) Whether the arresting law enforcement officer had probable cause to believe that the person was operating a vehicle in violation of IC 9-30-5.
- (2) Whether the person refused to submit to a chemical test offered by a law enforcement officer.

(d) If the court finds:

- (1) that there was no probable cause; or
- (2) that the person's driving privileges were suspended under section 9(a) of this chapter and that the person did not refuse to submit to a chemical test;

the court shall order the bureau to **rescind the ignition interlock device requirement** or reinstate the person's driving privileges.

(e) The prosecuting attorney of the county in which a petition has been filed under this chapter shall represent the state on relation of the bureau with respect to the petition.

(f) The petitioner has the burden of proof by a preponderance of the

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evidence.

(g) The court's order is a final judgment appealable in the manner of civil actions by either party. The attorney general shall represent the state on relation of the bureau with respect to the appeal.

SECTION 17. IC 9-30-6-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 11. (a) Notwithstanding any other provision of this chapter, IC 9-30-5, or IC 9-30-9, the court shall order the bureau to **rescind an ignition interlock device requirement or** reinstate the driving privileges of a person if:

(1) all of the charges under IC 9-30-5 have been dismissed and the prosecuting attorney states on the record that no charges will be refiled against the person;

(2) the court finds the allegations in a petition filed by a defendant under section 18 of this chapter are true; or

(3) the person:

(A) did not refuse to submit to a chemical test offered as a result of a law enforcement officer having probable cause to believe the person committed the offense charged; and

(B) has been found not guilty of all charges by a court or by a jury.

(b) The court's order must contain findings of fact establishing that the requirements for reinstatement described in subsection (a) have been met.

(c) A person whose driving privileges are reinstated under this section is not required to pay a reinstatement fee.

SECTION 18. IC 9-30-6-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 13. If a court orders the bureau to **rescind an ignition interlock device requirement or** reinstate a person's driving privileges under this article, the bureau shall comply with the order. Unless the order for reinstatement is issued under section 11(2) of this chapter, the bureau shall also do the following:

(1) Remove any record of the **ignition interlock device requirement or** suspension from the bureau's recordkeeping system.

(2) Reinstate the privileges without cost to the person.

SECTION 19. IC 9-30-6-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 18. (a) A person **against whom an ignition interlock device order has been issued under section 8.5 of this chapter or** whose driving privileges have been suspended under section 9(b) of this chapter is entitled to **rescission of the ignition interlock device requirement or**

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reinstatement of driving privileges if the following occur:

(1) After a request for an early trial is made by the person at the initial hearing on the charges, a trial or other disposition of the charges for which the person was arrested under IC 9-30-5 is not held within ninety (90) days after the date of the person's initial hearing on the charges.

(2) The delay in trial or disposition of the charges is not due to the person arrested under IC 9-30-5.

(b) A person who desires **rescission of the ignition interlock device requirement or** reinstatement of driving privileges under this section must file a verified petition in the court where the charges against the petitioner are pending. The petition must allege the following:

(1) The date of the petitioner's arrest under IC 9-30-5.

(2) The date of the petitioner's initial hearing on the charges filed against the petitioner under IC 9-30-5.

(3) The date set for trial or other disposition of the matter.

(4) A statement averring the following:

(A) That the petitioner requested an early trial of the matter at the petitioner's initial hearing on the charges filed against the petitioner under IC 9-30-5.

(B) The trial or disposition date set by the court is at least ninety (90) days after the date of the petitioner's initial hearing on the charges filed against the petitioner under IC 9-30-5.

(C) The delay in the trial or disposition is not due to the petitioner.

(c) Upon the filing of a petition under this section, the court shall immediately examine the record of the court to determine whether the allegations in the petition are true.

(d) If the court finds the allegations of a petition filed under this section are true, the court shall order **rescission of the ignition interlock device requirement or** reinstatement of the petitioner's driving privileges under section 11 of this chapter. The reinstatement must not take effect until ninety (90) days after the date of the petitioner's initial hearing.

SECTION 20. IC 9-30-8-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. If a court orders the installation of a certified ignition interlock device under ~~IC 9-30-5-16~~ **IC 9-30-5** on a motor vehicle that a person whose license is restricted owns or expects to operate, the court shall set the time that the installation must remain in effect. However, the term may not exceed the maximum term of imprisonment the court could have imposed. The

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person shall pay the cost of installation.

SECTION 21. IC 9-30-9-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) If the court enters an order conditionally deferring charges under section 3 of this chapter, the court may do the following:

(1) Suspend the person's driving privileges for at least two (2) years but not more than four (4) years.

(2) Impose other appropriate conditions, including the payment of fees imposed under section 8 of this chapter.

(b) Notwithstanding IC 9-30-6-9, the defendant may be granted probationary driving privileges only after the defendant's license has been suspended for at least one (1) year.

(c) If a defendant has at least one (1) conviction for an offense under IC 9-30-5, the order granting probationary driving privileges under subsection (b) must, in a county that provides for the installation of an ignition interlock device under IC 9-30-8, prohibit the defendant from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8.

(d) If a defendant does not have a prior conviction for an offense under IC 9-30-5, the court may, as an alternative to a license suspension under subsection (a)(1), issue an order prohibiting the defendant from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8. An order requiring an ignition interlock device must remain in effect for at least two (2) years but not more than four (4) years.

SECTION 22. IC 9-30-9-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 7. (a) If the court refers a defendant to the program under section 6 of this chapter, the court may do the following:

(1) Suspend the defendant's driving privileges for at least ninety (90) days but not more than four (4) years.

(2) Impose other appropriate conditions.

(b) The defendant may be granted probationary driving privileges only after the defendant's license has been suspended for at least thirty (30) days under IC 9-30-6-9.

(c) If a defendant has at least one (1) conviction, including a conviction for the instant offense, for an offense under IC 9-30-5, the order granting probationary driving privileges under subsection (b) must, in a county that provides for the installation of an ignition interlock device under IC 9-30-8, prohibit the

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1 defendant from operating a motor vehicle unless the motor vehicle
2 is equipped with a functioning certified ignition interlock device
3 under IC 9-30-8.

4 (d) If a defendant does not have a prior conviction for an offense
5 under IC 9-30-5, the court may, as an alternative to a license
6 suspension under subsection (a)(1), issue an order prohibiting the
7 defendant from operating a motor vehicle unless the motor vehicle
8 is equipped with a functioning certified ignition interlock device
9 under IC 9-30-8. An order requiring an ignition interlock device
10 must remain in effect for at least two (2) years but not more than
11 four (4) years.

12 SECTION 23. IC 9-30-9-7.5 IS ADDED TO THE INDIANA CODE
13 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
14 1, 2004]: Sec. 7.5. (a) A person commits a Class B infraction if the
15 person:

16 (1) operates a motor vehicle without a functioning certified
17 ignition interlock device; and

18 (2) is prohibited from operating a motor vehicle unless the
19 motor vehicle is equipped with a functioning certified ignition
20 interlock device under section 5(d) or 7(d) of this chapter.

21 (b) A person commits a Class B misdemeanor if the person:

22 (1) operates a motor vehicle without a functioning certified
23 ignition interlock device; and

24 (2) knows the person is prohibited from operating a motor
25 vehicle unless the motor vehicle is equipped with a functioning
26 certified ignition interlock device under section 5(d) or 7(d) of
27 this chapter.

28 SECTION 24. IC 9-30-10-5 IS AMENDED TO READ AS
29 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) If it appears from
30 the records maintained in the bureau that a person's driving record
31 makes the person a habitual violator under section 4 of this chapter, the
32 bureau shall mail a notice to the person's last known address that
33 informs the person that the person's driving privileges will be
34 suspended in thirty (30) days because the person is a habitual violator
35 according to the records of the bureau.

36 (b) Thirty (30) days after the bureau has mailed a notice under this
37 section, the bureau shall suspend the person's driving privileges for:

38 (1) **except as provided in subdivision (2)**, ten (10) years if the
39 person is a habitual violator under section 4(a) of this chapter;

40 (2) **life if the person is a habitual violator under section 4(a) of**
41 **this chapter and has at least two (2) violations under section**
42 **4(a)(4) through 4(a)(7) of this chapter;**

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(3) ten (10) years if the person is a habitual violator under section 4(b) of this chapter; or
 (3) (4) five (5) years if the person is a habitual violator under section 4(c) of this chapter.

(c) The notice must inform the person that the person may be entitled to relief under section 6 of this chapter or may seek judicial review of the person's suspension under this chapter.

SECTION 25. IC 12-23-5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) Subject to subsection (b), if a court enters an order conditionally deferring charges that involve a violation of IC 9-30-5, the court shall do the following:

(1) Suspend the defendant's driving privileges for at least ninety (90) days but not more than two (2) years.

(2) Impose other appropriate conditions.

(b) A defendant may be granted probationary driving privileges only after the defendant's license has been suspended for at least thirty (30) days under IC 9-30-6-9.

(c) If a defendant has at least one (1) conviction for an offense under IC 9-30-5, the order granting probationary driving privileges under subsection (b) must, in a county that provides for the installation of an ignition interlock device under IC 9-30-8, prohibit the defendant from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8.

(d) If a defendant does not have a prior conviction for an offense under IC 9-30-5, the court may, as an alternative to a license suspension under subsection (a)(1), issue an order prohibiting the defendant from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8. An order requiring an ignition interlock device must remain in effect for at least two (2) years but not more than four (4) years.

SECTION 26. IC 12-23-5-5.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5.5. (a) A person commits a Class B infraction if the person:

(1) operates a motor vehicle without a functioning certified ignition interlock device; and

(2) is prohibited from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under section 5(d) of this chapter.

(b) A person commits a Class B misdemeanor if the person:

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(1) operates a motor vehicle without a functioning certified ignition interlock device; and

(2) knows the person is prohibited from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under section 5(d) of this chapter.

SECTION 27. IC 35-48-4-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 15. (a) If a person is convicted of an offense under section 1, 2, 3, 4, 5, 6, 7, 10, or 11 of this chapter, or conspiracy to commit an offense under section 1, 2, 3, 4, 5, 6, 7, 10, or 11 of this chapter, **and the court finds that a motor vehicle was used in the commission of the offense**, the court shall, in addition to any other order the court enters, order that the person's:

(1) operator's license be suspended;

(2) existing motor vehicle registrations be suspended; and

(3) ability to register motor vehicles be suspended;

by the bureau of motor vehicles for a period specified by the court of at least six (6) months but not more than two (2) years.

(b) If a person is convicted of an offense described in subsection (a) and the person does not hold an operator's license or a learner's permit, the court shall order that the person may not receive an operator's license or a learner's permit from the bureau of motor vehicles for a period of not less than six (6) months.

SECTION 28. IC 35-50-2-2, AS AMENDED BY P.L.224-2003, SECTION 126, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) The court may suspend any part of a sentence for a felony, except as provided in this section or in section 2.1 of this chapter.

(b) With respect to the following crimes listed in this subsection, the court may suspend only that part of the sentence that is in excess of the minimum sentence, unless the court has approved placement of the offender in a forensic diversion program under IC 11-12-3.5:

(1) The crime committed was a Class A or Class B felony and the person has a prior unrelated felony conviction.

(2) The crime committed was a Class C felony and less than seven (7) years have elapsed between the date the person was discharged from probation, imprisonment, or parole, whichever is later, for a prior unrelated felony conviction and the date the person committed the Class C felony for which the person is being sentenced.

(3) The crime committed was a Class D felony and less than three (3) years have elapsed between the date the person was

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discharged from probation, imprisonment, or parole, whichever is later, for a prior unrelated felony conviction and the date the person committed the Class D felony for which the person is being sentenced. However, the court may suspend the minimum sentence for the crime only if the court orders home detention under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum sentence specified for the crime under this chapter.

(4) The felony committed was:

- (A) murder (IC 35-42-1-1);
- (B) battery (IC 35-42-2-1) with a deadly weapon or battery causing death;
- (C) sexual battery (IC 35-42-4-8) with a deadly weapon;
- (D) kidnapping (IC 35-42-3-2);
- (E) confinement (IC 35-42-3-3) with a deadly weapon;
- (F) rape (IC 35-42-4-1) as a Class A felony;
- (G) criminal deviate conduct (IC 35-42-4-2) as a Class A felony;
- (H) child molesting (IC 35-42-4-3) as a Class A or Class B felony;
- (I) robbery (IC 35-42-5-1) resulting in serious bodily injury or with a deadly weapon;
- (J) arson (IC 35-43-1-1) for hire or resulting in serious bodily injury;
- (K) burglary (IC 35-43-2-1) resulting in serious bodily injury or with a deadly weapon;
- (L) resisting law enforcement (IC 35-44-3-3) with a deadly weapon;
- (M) escape (IC 35-44-3-5) with a deadly weapon;
- (N) rioting (IC 35-45-1-2) with a deadly weapon;
- (O) dealing in cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1) if the court finds the person possessed a firearm (as defined in IC 35-47-1-5) at the time of the offense, or the person delivered or intended to deliver to a person under eighteen (18) years of age at least three (3) years junior to the person and was on a school bus or within one thousand (1,000) feet of:
 - (i) school property;
 - (ii) a public park;
 - (iii) a family housing complex; or
 - (iv) a youth program center;
- (P) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2) if the court finds the person possessed a firearm

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(as defined in IC 35-47-1-5) at the time of the offense, or the person delivered or intended to deliver to a person under eighteen (18) years of age at least three (3) years junior to the person and was on a school bus or within one thousand (1,000) feet of:

- (i) school property;
- (ii) a public park;
- (iii) a family housing complex; or
- (iv) a youth program center;

(Q) an offense under IC 9-30-5 (operating a vehicle while intoxicated) and the person who committed the offense has accumulated at least two (2) prior unrelated convictions under IC 9-30-5; or

(R) an offense under IC 9-30-5-5 (operating a vehicle while intoxicated causing death) if the person had:

- (i) at least fifteen-hundredths (0.15) gram of alcohol per one hundred (100) milliliters of the person's blood, or at least fifteen-hundredths (0.15) gram of alcohol per two hundred ten (210) liters of the person's breath; or**

- (ii) a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's blood; or**

(S) aggravated battery (IC 35-42-2-1.5).

(c) Except as provided in subsection (e), whenever the court suspends a sentence for a felony, it shall place the person on probation under IC 35-38-2 for a fixed period to end not later than the date that the maximum sentence that may be imposed for the felony will expire.

(d) The minimum sentence for a person convicted of voluntary manslaughter may not be suspended unless the court finds at the sentencing hearing that the crime was not committed by means of a deadly weapon.

(e) Whenever the court suspends that part of an offender's (as defined in IC 5-2-12-4) sentence that is suspendible under subsection (b), the court shall place the offender on probation under IC 35-38-2 for not more than ten (10) years.

(f) An additional term of imprisonment imposed under IC 35-50-2-11 may not be suspended.

(g) A term of imprisonment imposed under IC 35-47-10-6 or IC 35-47-10-7 may not be suspended if the commission of the offense was knowing or intentional.

(h) A term of imprisonment imposed for an offense under IC 35-48-4-6(b)(1)(B) may not be suspended.

SECTION 29. [EFFECTIVE JULY 1, 2004] **(a) IC 9-30-5-3, as**

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1 amended by this act, applies only to offenses committed after June
2 30, 2004.
3 (b) IC 9-30-5-10, IC 9-30-5-15, IC 9-30-10-5, and IC 35-50-2-2,
4 all as amended by this act, apply only if the last offense was
5 committed after June 30, 2004.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1264, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 4, between lines 15 and 16, begin a new paragraph and insert:

"SECTION 5. IC 9-30-6-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 8. (a) Whenever a judicial officer has determined that there was probable cause to believe that a person has violated IC 9-30-5 or IC 14-15-8, the clerk of the court shall forward:

- (1) a copy of the affidavit; and
- (2) a bureau certificate as described in section 16 of this chapter; to the bureau.

(b) The probable cause affidavit required under section 7(b)(2) of this chapter must do the following:

- (1) Set forth the grounds for the arresting officer's belief that there was probable cause that the arrested person was operating a vehicle in violation of IC 9-30-5 or a motorboat in violation of IC 14-15-8.
- (2) State that the person was arrested for a violation of IC 9-30-5 or operating a motorboat in violation of IC 14-15-8.
- (3) State whether the person:
 - (A) refused to submit to a chemical test when offered; or
 - (B) submitted to a chemical test that resulted in prima facie evidence that the person was intoxicated.
- (4) Be sworn to by the arresting officer.

(c) **Except as provided in subsection (d)**, if it is determined under subsection (a) that there was probable cause to believe that a person has violated IC 9-30-5 or IC 14-15-8, at the initial hearing of the matter held under IC 35-33-7-1:

- (1) the court shall recommend immediate suspension of the person's driving privileges to take effect on the date the order is entered;
- (2) the court shall order the person to surrender all driver's licenses, permits, and receipts; and
- (3) the clerk shall forward the following to the bureau:
 - (A) The person's license or permit surrendered under this section or section 3 or 7 of this chapter.
 - (B) A copy of the order recommending immediate suspension of driving privileges.

(d) If it is determined under subsection (a) that there is probable

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cause to believe that a person violated IC 9-30-5, the court may issue an order recommending that the person be prohibited from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8 until the bureau is notified by a court that the criminal charges against the person have been resolved.

SECTION 6. IC 9-30-6-8.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 8.5. (a) If the bureau receives an order recommending use of an ignition interlock device under section 8(d) of this chapter, the bureau shall immediately do the following:

(1) Mail a notice to the person's last known address stating that the person may not operate a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8 commencing:

(A) five (5) days after the date of the notice; or

(B) on the date the court enters an order recommending use of an ignition interlock device;

whichever occurs first.

(2) Notify the person of the right to a judicial review under section 10 of this chapter.

(b) Notwithstanding IC 4-21.5, an action that the bureau is required to take under this section is not subject to any administrative adjudication under IC 4-21.5.

SECTION 7. IC 9-30-6-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9. (a) **This section does not apply if an ignition interlock device order is issued under section 8(d) of this chapter.**

(b) If the affidavit under section 8(b) of this chapter states that a person refused to submit to a chemical test, the bureau shall suspend the driving privileges of the person:

(1) for one (1) year; or

(2) until the suspension is ordered terminated under IC 9-30-5.

~~(b)~~ (c) If the affidavit under section 8(b) of this chapter states that a chemical test resulted in prima facie evidence that a person was intoxicated, the bureau shall suspend the driving privileges of the person:

(1) for one hundred eighty (180) days; or

(2) until the bureau is notified by a court that the charges have been disposed of;

whichever occurs first.

~~(c)~~ (d) Whenever the bureau is required to suspend a person's

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driving privileges under this section, the bureau shall immediately do the following:

(1) Mail a notice to the person's last known address that must state that the person's driving privileges will be suspended for a specified period, commencing:

(A) five (5) days after the date of the notice; or

(B) on the date the court enters an order recommending suspension of the person's driving privileges under section 8(c) of this chapter;

whichever occurs first.

(2) Notify the person of the right to a judicial review under section 10 of this chapter.

~~(d)~~ (e) Notwithstanding IC 4-21.5, an action that the bureau is required to take under this article is not subject to any administrative adjudication under IC 4-21.5.

~~(e)~~ (f) If a person is granted probationary driving privileges under IC 9-30-5 and the bureau has not received the probable cause affidavit described in section 8(b) of this chapter, the bureau shall suspend the person's driving privileges for a period of thirty (30) days. After the thirty (30) day period has elapsed, the bureau shall, upon receiving a reinstatement fee from the person who was granted probationary driving privileges, issue the probationary license if the person otherwise qualifies for a license.

~~(f)~~ (g) If the bureau receives an order granting probationary driving privileges to a person who has a prior conviction for operating while intoxicated, the bureau shall do the following:

(1) Issue the person a probationary license and notify the prosecuting attorney of the county from which the order was received that the person is not eligible for a probationary license.

(2) Send a certified copy of the person's driving record to the prosecuting attorney.

The prosecuting attorney shall, in accordance with IC 35-38-1-15, petition the court to correct the court's order. If the bureau does not receive a corrected order within sixty (60) days, the bureau shall notify the attorney general, who shall, in accordance with IC 35-38-1-15, petition the court to correct the court's order.

SECTION 8. IC 9-30-6-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 10. (a) A person **against whom an ignition interlock device order has been issued under section 8.5 of this chapter or** whose driving privileges have been suspended under section 9 of this chapter is entitled to a prompt judicial hearing. The person may file a petition that requests a hearing:

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- (1) in the court where the charges with respect to the person's operation of a vehicle are pending; or
- (2) if charges with respect to the person's operation of a vehicle have not been filed, in any court of the county where the alleged offense or refusal occurred that has jurisdiction over crimes committed in violation of IC 9-30-5.

(b) The petition for review must:

- (1) be in writing;
- (2) be verified by the person seeking review; and
- (3) allege specific facts that contradict the facts alleged in the probable cause affidavit.

(c) The hearing under this section shall be limited to the following issues:

- (1) Whether the arresting law enforcement officer had probable cause to believe that the person was operating a vehicle in violation of IC 9-30-5.
- (2) Whether the person refused to submit to a chemical test offered by a law enforcement officer.

(d) If the court finds:

- (1) that there was no probable cause; or
- (2) that the person's driving privileges were suspended under section 9(a) of this chapter and that the person did not refuse to submit to a chemical test;

the court shall order the bureau to **rescind the ignition interlock device requirement or** reinstate the person's driving privileges.

(e) The prosecuting attorney of the county in which a petition has been filed under this chapter shall represent the state on relation of the bureau with respect to the petition.

(f) The petitioner has the burden of proof by a preponderance of the evidence.

(g) The court's order is a final judgment appealable in the manner of civil actions by either party. The attorney general shall represent the state on relation of the bureau with respect to the appeal.

SECTION 9. IC 9-30-6-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 11. (a) Notwithstanding any other provision of this chapter, IC 9-30-5, or IC 9-30-9, the court shall order the bureau to **rescind an ignition interlock device requirement or** reinstate the driving privileges of a person if:

- (1) all of the charges under IC 9-30-5 have been dismissed and the prosecuting attorney states on the record that no charges will be refiled against the person;
- (2) the court finds the allegations in a petition filed by a defendant

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under section 18 of this chapter are true; or

(3) the person:

(A) did not refuse to submit to a chemical test offered as a result of a law enforcement officer having probable cause to believe the person committed the offense charged; and

(B) has been found not guilty of all charges by a court or by a jury.

(b) The court's order must contain findings of fact establishing that the requirements for reinstatement described in subsection (a) have been met.

(c) A person whose driving privileges are reinstated under this section is not required to pay a reinstatement fee.

SECTION 10. IC 9-30-6-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 13. If a court orders the bureau to **rescind an ignition interlock device requirement or** reinstate a person's driving privileges under this article, the bureau shall comply with the order. Unless the order for reinstatement is issued under section 11(2) of this chapter, the bureau shall also do the following:

(1) Remove any record of the **ignition interlock device requirement or** suspension from the bureau's recordkeeping system.

(2) Reinstate the privileges without cost to the person.

SECTION 11. IC 9-30-6-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 18. (a) A person **against whom an ignition interlock device order has been issued under section 8.5 of this chapter or** whose driving privileges have been suspended under section 9(b) of this chapter is entitled to **rescission of the ignition interlock device requirement or** reinstatement of driving privileges if the following occur:

(1) After a request for an early trial is made by the person at the initial hearing on the charges, a trial or other disposition of the charges for which the person was arrested under IC 9-30-5 is not held within ninety (90) days after the date of the person's initial hearing on the charges.

(2) The delay in trial or disposition of the charges is not due to the person arrested under IC 9-30-5.

(b) A person who desires **rescission of the ignition interlock device requirement or** reinstatement of driving privileges under this section must file a verified petition in the court where the charges against the petitioner are pending. The petition must allege the following:

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- (1) The date of the petitioner's arrest under IC 9-30-5.
- (2) The date of the petitioner's initial hearing on the charges filed against the petitioner under IC 9-30-5.
- (3) The date set for trial or other disposition of the matter.
- (4) A statement averring the following:
 - (A) That the petitioner requested an early trial of the matter at the petitioner's initial hearing on the charges filed against the petitioner under IC 9-30-5.
 - (B) The trial or disposition date set by the court is at least ninety (90) days after the date of the petitioner's initial hearing on the charges filed against the petitioner under IC 9-30-5.
 - (C) The delay in the trial or disposition is not due to the petitioner.

(c) Upon the filing of a petition under this section, the court shall immediately examine the record of the court to determine whether the allegations in the petition are true.

(d) If the court finds the allegations of a petition filed under this section are true, the court shall order **rescission of the ignition interlock device requirement or** reinstatement of the petitioner's driving privileges under section 11 of this chapter. The reinstatement must not take effect until ninety (90) days after the date of the petitioner's initial hearing."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1264 as introduced.)

DVORAK, Chair

Committee Vote: yeas 12, nays 0.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1264 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 9-24-15-6.5, AS AMENDED BY P.L.215-2001, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 6.5. (a) The court shall grant a petition for a restricted driving permit filed under this chapter if all of the following conditions exist:

(1) The person was not convicted of one (1) or more of the following:

(A) A Class D felony under IC 9-30-5-4 before July 1, 1996, or a Class D felony or a Class C felony under IC 9-30-5-4 after June 30, 1996.

(B) A Class C felony under IC 9-30-5-5 before July 1, 1996, or a Class C felony or a Class B felony under IC 9-30-5-5 after June 30, 1996.

(2) The person's driving privileges were suspended under IC 9-30-6-9(b) or IC 35-48-4-15.

(3) The driving that was the basis of the suspension was not in connection with the person's work.

(4) The person does not have a previous conviction for operating while intoxicated.

(5) The person is participating in a rehabilitation program certified by either the division of mental health and addiction or the Indiana judicial center as a condition of the person's probation.

(b) The person filing the petition for a restricted driving permit shall include in the petition the information specified in subsection (a) in addition to the information required by sections 3 through 4 of this chapter.

(c) Whenever the court grants a person restricted driving privileges under this chapter, that part of the court's order granting probationary driving privileges:

(1) shall not take effect until the person's driving privileges have been suspended for at least thirty (30) days under IC 9-30-6-9; **or**

(2) notwithstanding IC 9-30-6-9, shall take effect immediately if the person consents to the issuance of an order by the court prohibiting the person from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8.

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An ignition interlock device is required as a condition of probationary driving privileges under subdivision (2) for the entire duration of the probationary driving privileges."

Page 5, line 10, after "may" insert ", as an alternative to a license suspension under subsection (c)(1)".

Page 5, between lines 33 and 34, begin a new paragraph and insert:
"SECTION 8. IC 9-30-6-8.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 8.7. (a) A person commits a Class B infraction if the person:

- (1) operates a motor vehicle without a functioning certified ignition interlock device; and**
- (2) is prohibited from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under section 8(d) of this chapter.**

(b) A person commits a Class B misdemeanor if the person:

- (1) operates a motor vehicle without a functioning certified ignition interlock device; and**
- (2) knows the person is prohibited from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under section 8(d) of this chapter."**

Page 9, after line 39, begin a new paragraph and insert:

"SECTION 15. IC 9-30-9-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) If the court enters an order conditionally deferring charges under section 3 of this chapter, the court may do the following:

- (1) Suspend the person's driving privileges for at least two (2) years but not more than four (4) years.**
- (2) Impose other appropriate conditions, including the payment of fees imposed under section 8 of this chapter.**

(b) Notwithstanding IC 9-30-6-9, the defendant may be granted probationary driving privileges only after the defendant's license has been suspended for at least one (1) year.

(c) If a defendant has at least one (1) conviction for an offense under IC 9-30-5, the order granting probationary driving privileges under subsection (b) must prohibit the defendant from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8.

(d) If a defendant does not have a prior conviction for an offense under IC 9-30-5, the court may, as an alternative to a license suspension under subsection (a)(1), issue an order prohibiting the

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defendant from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8. An order requiring an ignition interlock device must remain in effect for at least two (2) years but not more than four (4) years.

SECTION 16. IC 9-30-9-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 7. (a) If the court refers a defendant to the program under section 6 of this chapter, the court may do the following:

(1) Suspend the defendant's driving privileges for at least ninety (90) days but not more than four (4) years.

(2) Impose other appropriate conditions.

(b) The defendant may be granted probationary driving privileges only after the defendant's license has been suspended for at least thirty (30) days under IC 9-30-6-9.

(c) If a defendant has at least one (1) conviction, including a conviction for the instant offense, for an offense under IC 9-30-5, the order granting probationary driving privileges under subsection (b) must prohibit the defendant from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8.

(d) If a defendant does not have a prior conviction for an offense under IC 9-30-5, the court may, as an alternative to a license suspension under subsection (a)(1), issue an order prohibiting the defendant from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8. An order requiring an ignition interlock device must remain in effect for at least two (2) years but not more than four (4) years.

SECTION 17. IC 9-30-9-7.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 7.5. (a) A person commits a Class B infraction if the person:

(1) operates a motor vehicle without a functioning certified ignition interlock device; and

(2) is prohibited from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under section 5(d) or 7(d) of this chapter.

(b) A person commits a Class B misdemeanor if the person:

(1) operates a motor vehicle without a functioning certified ignition interlock device; and

(2) knows the person is prohibited from operating a motor

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vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under section 5(d) or 7(d) of this chapter.

SECTION 18. IC 12-23-5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) Subject to subsection (b), if a court enters an order conditionally deferring charges that involve a violation of IC 9-30-5, the court shall do the following:

- (1) Suspend the defendant's driving privileges for at least ninety (90) days but not more than two (2) years.
- (2) Impose other appropriate conditions.

(b) A defendant may be granted probationary driving privileges only after the defendant's license has been suspended for at least thirty (30) days under IC 9-30-6-9.

(c) **If a defendant has at least one (1) conviction for an offense under IC 9-30-5, the order granting probationary driving privileges under subsection (b) must prohibit the defendant from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8.**

(d) **If a defendant does not have a prior conviction for an offense under IC 9-30-5, the court may, as an alternative to a license suspension under subsection (a)(1), issue an order prohibiting the defendant from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8. An order requiring an ignition interlock device must remain in effect for at least two (2) years but not more than four (4) years.**

SECTION 19. IC 12-23-5-5.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5.5. (a) **A person commits a Class B infraction if the person:**

- (1) operates a motor vehicle without a functioning certified ignition interlock device; and
- (2) is prohibited from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under section 5(d) of this chapter.

(b) **A person commits a Class B misdemeanor if the person:**

- (1) operates a motor vehicle without a functioning certified ignition interlock device; and
- (2) knows the person is prohibited from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under section 5(d) of this chapter."

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Renumber all SECTIONS consecutively.

(Reference is to HB 1264 as printed January 23, 2004.)

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COMMITTEE REPORT

Madam President: The Senate Committee on Criminal, Civil and Public Policy, to which was referred House Bill No. 1264, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 9-14-3-7, AS AMENDED BY P.L.112-2001, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 7. (a) The bureau shall maintain an operating record for each person licensed by the bureau to drive a motor vehicle.

(b) An operating record must contain the following:

(1) A person's convictions for any of the following:

(A) A moving traffic violation.

(B) Operating a vehicle without financial responsibility in violation of IC 9-25.

(2) Any administrative penalty imposed by the bureau.

(3) If the driving privileges of a person have been suspended or revoked by the bureau, an entry in the record stating that a notice of suspension or revocation was mailed by the bureau and the date of the mailing of the notice.

(4) Any suspensions, revocations, or reinstatements of a person's driving privileges, license, or permit.

(5) Any requirement that the person may operate only a motor vehicle equipped with an certified ignition interlock device.

(c) An entry in the operating record of a defendant stating that notice of suspension or revocation was mailed by the bureau to the defendant constitutes prima facie evidence that the notice was mailed to the defendant's address as shown in the official driving record.

(d) An operating record maintained under this section:

(1) is not admissible as evidence in any action for damages arising out of a motor vehicle accident; and

(2) may not include voter registration information."

Page 2, line 21, delete "An" and insert **"In a county that provides for the installation of an ignition interlock device under IC 9-30-8, installation of an"**.

Page 2, between lines 23 and 24, begin a new paragraph and insert:

"(d) If a court requires installation of a certified ignition interlock device under subsection (c), the court shall order the bureau to record this requirement in the person's operating record

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in accordance with IC 9-14-3-7. When the person is no longer required to operate only a motor vehicle equipped with an ignition interlock device, the court shall notify the bureau that the ignition interlock use requirement has expired and order the bureau to update its records accordingly."

Page 2, delete lines 39 through 42.

Delete page 3.

Page 4, delete lines 1 through 9.

Page 4, line 41, delete "possession or".

Page 5, line 1, delete "must" and insert "may".

Page 11, line 26, after "must" insert **", in a county that provides for the installation of an ignition interlock device under IC 9-30-8,"**.

Page 12, line 8, after "must" insert **", in a county that provides for the installation of an ignition interlock device under IC 9-30-8,"**.

Page 13, line 5, after "must" insert **", in a county that provides for the installation of an ignition interlock device under IC 9-30-8,"**.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1264 as reprinted January 30, 2004.)

LONG, Chairperson

Committee Vote: Yeas 7, Nays 0.

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SENATE MOTION

Madam President: I move that Engrossed House Bill 1264 be amended to read as follows:

Page 3, between lines 18 and 19, begin a new paragraph and insert:

"SECTION 3. IC 9-30-5-3, AS AMENDED BY P.L.291-2001, SECTION 222, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. A person who violates section 1 or 2 of this chapter commits a Class D felony if:

(1) the person has a previous conviction of operating while intoxicated ~~and~~

~~(2) the previous conviction of operating while intoxicated that occurred within the five (5) years immediately preceding the occurrence of the violation of section 1 or 2 of this chapter; or~~

(2) the person:

(A) is at least twenty-one (21) years of age;

(B) violates section 1(b) or 2(b) of this chapter; and

(C) operated a vehicle in which at least one (1) passenger was less than eighteen (18) years of age."

Page 3, between lines 33 and 34, begin a new paragraph and insert:

"SECTION 5. IC 9-30-5-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 10. (a) In addition to a criminal penalty imposed for an offense under this chapter or IC 14-15-8, the court shall, after reviewing the person's bureau driving record and other relevant evidence, recommend the suspension of the person's driving privileges for the fixed period of time specified under this section.

(b) If the court finds that the person:

(1) does not have a previous conviction of operating a vehicle or a motorboat while intoxicated; or

(2) has a previous conviction of operating a vehicle or a motorboat while intoxicated that occurred at least ten (10) years before the conviction under consideration by the court;

the court shall recommend the suspension of the person's driving privileges for at least ninety (90) days but not more than two (2) years.

(c) If the court finds that the person has a previous conviction of operating a vehicle or a motorboat while intoxicated and the previous conviction occurred more than five (5) years but less than ten (10) years before the conviction under consideration by the court, the court shall recommend the suspension of the person's driving privileges for at least one hundred eighty (180) days but not more than two (2) years. The court may stay the execution of that part of the suspension that exceeds the minimum period of suspension and grant the person

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probationary driving privileges for a period of time equal to the length of the stay. If the court grants probationary driving privileges under this subsection, the court may order that the probationary driving privileges include the requirement that the person may not operate a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8.

(d) If the court finds that the person has a previous conviction of operating a vehicle or a motorboat while intoxicated and the previous conviction occurred less than five (5) years before the conviction under consideration by the court, the court shall recommend the suspension of the person's driving privileges for at least one (1) year but not more than two (2) years. ~~The court may stay the execution of that part of the suspension that exceeds the minimum period of suspension and grant the person probationary driving privileges for a period of time equal to the length of the stay. If the court grants probationary driving privileges under this subsection, the court may order that the probationary driving privileges include the requirement that the person may not operate a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8.~~

(e) If the conviction under consideration by the court is for an offense under section 1(b) of this chapter, the court shall recommend the suspension of the person's driving privileges for at least one hundred eighty (180) days but not more than two (2) years.

(f) If:

- (1) the conviction under consideration by the court is for an offense under section 1(a), 1(c), or 2(a) of this chapter; and
- (2) the court determines that the person was at least twenty-one (21) years of age and operated a vehicle in which at least one (1) passenger was less than eighteen (18) years of age;

the court shall recommend the suspension of the person's driving privileges for at least one hundred eighty (180) days but not more than two (2) years.

(g) If:

- (1) the conviction under consideration by the court is for an offense under section 1(b) or 2(b) of this chapter; and
- (2) the court determines that the person was at least twenty-one (21) years of age and operated a vehicle in which at least one (1) passenger was less than eighteen (18) years of age;

the court shall recommend the suspension of the person's driving

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privileges for at least one (1) year but not more than two (2) years.

(h) If the conviction under consideration by the court is for an offense under:

- (1) section 4 of this chapter;
- (2) section 5 of this chapter;
- (3) IC 14-15-8-8(b); or
- (4) IC 14-15-8-8(c);

the court shall recommend the suspension of the person's driving privileges for at least two (2) years but not more than five (5) years.

(i) If the conviction under consideration by the court is for an offense involving the use of a controlled substance listed in schedule I, II, III, IV, or V of IC 35-48-2, **in which a vehicle was used in the offense**, the court shall recommend the suspension or revocation of the person's driving privileges for at least six (6) months.

SECTION 6. IC 9-30-5-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 12. (a) If:

- (1) a court recommends suspension of a person's driving privileges under section 10(b) of this chapter for an offense committed under this chapter; and
- (2) the person did not refuse to submit to a chemical test offered under IC 9-30-6-2 during the investigation of the offense;

the court may stay the execution of the suspension of the person's driving privileges and grant the person probationary driving privileges for one hundred eighty (180) days.

(b) An order for probationary privileges must be issued in accordance with sections 11 and 13 of this chapter.

(c) If:

- (1) a court recommends suspension of a person's driving privileges under section 10(c) ~~10(d)~~, or ~~10(e)~~, **10(h)** of this chapter for an offense committed under this chapter; and
- (2) the period of suspension recommended by the court exceeds the minimum permissible fixed period of suspension specified under section 10 of this chapter;

the court may stay the execution of that part of the suspension that exceeds the minimum fixed period of suspension and grant the person probationary driving privileges for a period of time equal to the length of the stay.

(d) In addition to the other requirements of this section, if a person's driving privileges are suspended or revoked under section ~~10(f)~~ **10(i)** of this chapter, a court must find that compelling circumstances warrant the issuance of probationary driving privileges.

(e) Before a court may grant probationary driving privileges under

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this section, the person to whom the probationary driving privileges will be granted must meet the burden of proving eligibility to receive probationary driving privileges."

Page 4, between lines 8 and 9, begin a new paragraph and insert:

"SECTION 8. IC 9-30-5-15, AS AMENDED BY P.L.32-2000, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 15. (a) In addition to any criminal penalty imposed for an offense under this chapter the court shall:

(1) order:

(A) that the person be imprisoned for at least five (5) days; ~~or~~
and

(B) **that** the person ~~to~~ perform at least thirty (30) days of community restitution or service; and

(2) order the person to receive an assessment of the person's degree of alcohol and drug abuse and, if appropriate, to successfully complete an alcohol or drug ~~abuse treatment~~ program; ~~including an alcohol deterrent program if the person suffers from alcohol abuse;~~

if the person has one (1) previous conviction of operating while intoxicated.

(b) In addition to any criminal penalty imposed for an offense under this chapter, the court shall:

(1) order:

(A) that the person be imprisoned for at least ~~ten (10)~~ **thirty (30)** days; or

(B) the person to perform at least sixty (60) days of community restitution or service; and

(2) order the person to receive an assessment of the person's degree of alcohol and drug abuse and, if appropriate, to successfully complete an alcohol or drug ~~abuse treatment~~ program; ~~including an alcohol deterrent program if the person suffers from alcohol abuse;~~

if the person has at least two (2) previous convictions of operating while intoxicated.

(c) In addition to any criminal penalty imposed for an offense under this chapter, the court shall:

(1) order that the person be imprisoned for at least three (3) days; and

(2) order the person to:

(A) receive an assessment of the person's degree of alcohol and drug abuse; and

(B) if appropriate, successfully complete an alcohol or drug

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program;
if the person is convicted of an offense under section 1(b) of this chapter.

(d) In addition to any criminal penalty imposed for an offense under this chapter, the court shall:

- (1) order that the person be imprisoned for at least three (3) days; and
- (2) order the person to:
 - (A) receive an assessment of the person's degree of alcohol and drug abuse; and
 - (B) if appropriate, successfully complete an alcohol or drug program;

if the person is at least twenty-one (21) years of age and is convicted of an offense under section 1(a), 1(c), or 2 of this chapter in which at least one (1) passenger was less than eighteen (18) years of age.

(e) In addition to any criminal penalty imposed for an offense under this chapter, the court shall order the person to:

- (1) receive an assessment of the person's degree of alcohol and drug abuse; and
- (2) if appropriate, successfully complete an alcohol or drug program;

if the person is convicted of an offense under section 4 or 5 of this chapter.

(f) An assessment for alcohol and drug abuse required under this section must be conducted by:

- (1) a court established alcohol and drug services program certified under IC 12-23-14;
- (2) a circuit court alcohol abuse deterrent program established under IC 9-30-9; or
- (3) a drug court certified under IC 12-23-14.5.

In a county that does not have a program described in subdivision (1), (2), or (3), the assessment must be conducted by an addiction services treatment provider certified by the division of mental health and addiction under IC 12-23.

(g) A court ordering a person to complete an alcohol or drug program under this section must determine that the program is:

- (1) certified under IC 12-23-14 or IC 12-23-14.5; or
- (2) authorized under IC 9-30-9.

In a county that does not have a program described in subdivision (1) or (2), the program must be conducted by an addiction services treatment provider certified by the division of mental health and

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addiction under IC 12-23.

~~(e)~~ **(h)** Notwithstanding IC 35-50-2-2 and IC 35-50-3-1, a sentence imposed under this section may not be suspended. The court may require that the person serve the term of imprisonment in an appropriate facility at whatever time or intervals (consecutive or intermittent) determined appropriate by the court. However:

(1) at least forty-eight (48) hours of the sentence must be served consecutively; and

(2) ~~the entire sentence a term of:~~

(A) imprisonment;

(B) community restitution or service; or

(C) both imprisonment and community restitution or service;

imposed under this section must be served within six (6) months after the date of sentencing.

~~(d)~~ **(i)** Notwithstanding IC 35-50-6, a person does not earn credit time while serving a sentence imposed under this section."

Page 12, between lines 20 and 21, begin a new paragraph and insert:

"SECTION 22. IC 9-30-10-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) If it appears from the records maintained in the bureau that a person's driving record makes the person a habitual violator under section 4 of this chapter, the bureau shall mail a notice to the person's last known address that informs the person that the person's driving privileges will be suspended in thirty (30) days because the person is a habitual violator according to the records of the bureau.

(b) Thirty (30) days after the bureau has mailed a notice under this section, the bureau shall suspend the person's driving privileges for:

(1) **except as provided in subdivision (2),** ten (10) years if the person is a habitual violator under section 4(a) of this chapter;

(2) **life if the person is a habitual violator under section 4(a) of this chapter and has at least two (2) violations under section 4(a)(4) through 4(a)(7) of this chapter;**

(3) ten (10) years if the person is a habitual violator under section 4(b) of this chapter; or

~~(3)~~ **(4)** five (5) years if the person is a habitual violator under section 4(c) of this chapter.

(c) The notice must inform the person that the person may be entitled to relief under section 6 of this chapter or may seek judicial review of the person's suspension under this chapter."

Page 13, after line 19, begin a new paragraph and insert:

"SECTION 25. IC 35-48-4-15 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 15. (a) If a person is convicted of an offense under section 1, 2, 3, 4, 5, 6, 7, 10, or 11 of this chapter, or conspiracy to commit an offense under section 1, 2, 3, 4, 5, 6, 7, 10, or 11 of this chapter, **and the court finds that a motor vehicle was used in the commission of the offense**, the court shall, in addition to any other order the court enters, order that the person's:

- (1) operator's license be suspended;
- (2) existing motor vehicle registrations be suspended; and
- (3) ability to register motor vehicles be suspended;

by the bureau of motor vehicles for a period specified by the court of at least six (6) months but not more than two (2) years.

(b) If a person is convicted of an offense described in subsection (a) and the person does not hold an operator's license or a learner's permit, the court shall order that the person may not receive an operator's license or a learner's permit from the bureau of motor vehicles for a period of not less than six (6) months.

SECTION 26. IC 35-50-2-2, AS AMENDED BY P.L.224-2003, SECTION 126, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) The court may suspend any part of a sentence for a felony, except as provided in this section or in section 2.1 of this chapter.

(b) With respect to the following crimes listed in this subsection, the court may suspend only that part of the sentence that is in excess of the minimum sentence, unless the court has approved placement of the offender in a forensic diversion program under IC 11-12-3.5:

- (1) The crime committed was a Class A or Class B felony and the person has a prior unrelated felony conviction.
- (2) The crime committed was a Class C felony and less than seven (7) years have elapsed between the date the person was discharged from probation, imprisonment, or parole, whichever is later, for a prior unrelated felony conviction and the date the person committed the Class C felony for which the person is being sentenced.
- (3) The crime committed was a Class D felony and less than three (3) years have elapsed between the date the person was discharged from probation, imprisonment, or parole, whichever is later, for a prior unrelated felony conviction and the date the person committed the Class D felony for which the person is being sentenced. However, the court may suspend the minimum sentence for the crime only if the court orders home detention under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum sentence specified for the crime under this chapter.

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- (4) The felony committed was:
- (A) murder (IC 35-42-1-1);
 - (B) battery (IC 35-42-2-1) with a deadly weapon or battery causing death;
 - (C) sexual battery (IC 35-42-4-8) with a deadly weapon;
 - (D) kidnapping (IC 35-42-3-2);
 - (E) confinement (IC 35-42-3-3) with a deadly weapon;
 - (F) rape (IC 35-42-4-1) as a Class A felony;
 - (G) criminal deviate conduct (IC 35-42-4-2) as a Class A felony;
 - (H) child molesting (IC 35-42-4-3) as a Class A or Class B felony;
 - (I) robbery (IC 35-42-5-1) resulting in serious bodily injury or with a deadly weapon;
 - (J) arson (IC 35-43-1-1) for hire or resulting in serious bodily injury;
 - (K) burglary (IC 35-43-2-1) resulting in serious bodily injury or with a deadly weapon;
 - (L) resisting law enforcement (IC 35-44-3-3) with a deadly weapon;
 - (M) escape (IC 35-44-3-5) with a deadly weapon;
 - (N) rioting (IC 35-45-1-2) with a deadly weapon;
 - (O) dealing in cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1) if the court finds the person possessed a firearm (as defined in IC 35-47-1-5) at the time of the offense, or the person delivered or intended to deliver to a person under eighteen (18) years of age at least three (3) years junior to the person and was on a school bus or within one thousand (1,000) feet of:
 - (i) school property;
 - (ii) a public park;
 - (iii) a family housing complex; or
 - (iv) a youth program center;
 - (P) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2) if the court finds the person possessed a firearm (as defined in IC 35-47-1-5) at the time of the offense, or the person delivered or intended to deliver to a person under eighteen (18) years of age at least three (3) years junior to the person and was on a school bus or within one thousand (1,000) feet of:
 - (i) school property;
 - (ii) a public park;

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(iii) a family housing complex; or

(iv) a youth program center;

(Q) an offense under IC 9-30-5 (operating a vehicle while intoxicated) and the person who committed the offense has accumulated at least two (2) prior unrelated convictions under IC 9-30-5; or

(R) an offense under IC 9-30-5-5 (operating a vehicle while intoxicated causing death) if the person had:

(i) at least fifteen-hundredths (0.15) gram of alcohol per one hundred (100) milliliters of the person's blood, or at least fifteen-hundredths (0.15) gram of alcohol per two hundred ten (210) liters of the person's breath; or

(ii) a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's blood; or

(S) aggravated battery (IC 35-42-2-1.5).

(c) Except as provided in subsection (e), whenever the court suspends a sentence for a felony, it shall place the person on probation under IC 35-38-2 for a fixed period to end not later than the date that the maximum sentence that may be imposed for the felony will expire.

(d) The minimum sentence for a person convicted of voluntary manslaughter may not be suspended unless the court finds at the sentencing hearing that the crime was not committed by means of a deadly weapon.

(e) Whenever the court suspends that part of an offender's (as defined in IC 5-2-12-4) sentence that is suspendible under subsection (b), the court shall place the offender on probation under IC 35-38-2 for not more than ten (10) years.

(f) An additional term of imprisonment imposed under IC 35-50-2-11 may not be suspended.

(g) A term of imprisonment imposed under IC 35-47-10-6 or IC 35-47-10-7 may not be suspended if the commission of the offense was knowing or intentional.

(h) A term of imprisonment imposed for an offense under IC 35-48-4-6(b)(1)(B) may not be suspended.

SECTION 27. [EFFECTIVE JULY 1, 2004] (a) IC 9-30-5-3, as amended by this act, applies only to offenses committed after June 30, 2004.

(b) IC 9-30-5-10, IC 9-30-5-15, IC 9-30-10-5, and IC 35-50-2-2, all as amended by this act, apply only if the last offense was committed after June 30, 2004."

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Renumber all SECTIONS consecutively.

(Reference is to EHB 1264 as printed February 20, 2004.)

YOUNG R MICHAEL

SENATE MOTION

Madam President: I move that Engrossed House Bill 1264 be amended to read as follows:

Page 3, between lines 18 and 19, begin a new paragraph and insert:
"SECTION 3. IC 9-30-5-4, AS AMENDED BY P.L.175-2001, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. (a) A person who causes serious bodily injury to another person when operating a motor vehicle:

- (1) with an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per:
 - (A) one hundred (100) milliliters of the person's blood; or
 - (B) two hundred ten (210) liters of the person's breath;
- (2) with a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's body; or
- (3) while intoxicated;

commits a Class D felony. However, the offense is a Class C felony if **the person has a previous conviction of operating while intoxicated** within the five (5) years preceding the commission of the offense. ~~the person had a prior unrelated conviction under this chapter.~~

(b) A person who violates subsection (a) commits a separate offense for each person whose serious bodily injury is caused by the violation of subsection (a).

(c) It is a defense under subsection (a)(2) that the accused person consumed the controlled substance under a valid prescription or order of a practitioner (as defined in IC 35-48-1) who acted in the course of the practitioner's professional practice.

SECTION 4. IC 9-30-5-5, AS AMENDED BY P.L.175-2001, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) A person who causes the death of another person when operating a motor vehicle:

- (1) with an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per:
 - (A) one hundred (100) milliliters of the person's blood; or
 - (B) two hundred ten (210) liters of the person's breath;
- (2) with a controlled substance listed in schedule I or II of

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IC 35-48-2 or its metabolite in the person's body; or
 (3) while intoxicated;
 commits a Class C felony. However, the offense is a Class B felony if **the person has a previous conviction of operating while intoxicated** within the five (5) years preceding the commission of the offense. ~~the person had a prior unrelated conviction under this chapter.~~

(b) A person who violates subsection (a) commits a separate offense for each person whose death is caused by the violation of subsection (a).

(c) It is a defense under subsection (a)(2) that the accused person consumed the controlled substance under a valid prescription or order of a practitioner (as defined in IC 35-48-1) who acted in the course of the practitioner's professional practice."

Renumber all SECTIONS consecutively.

(Reference is to EHB 1264 as printed February 20, 2004.)

BRODEN

SENATE MOTION

Madam President: I move that Engrossed House Bill 1264 be amended to read as follows:

Page 2, line 40, delete ":".

Page 2, line 41, delete "(1)".

Page 2, line 42, delete "; or" and insert ".".

Page 3, delete lines 1 through 5.

Run in page 2, line 40 through page 3, line 6.

Page 3, line 9, delete "under subdivision (2)".

(Reference is to EHB 1264 as printed February 20, 2004.)

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